

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01 December 2010 has been entered.

Claim Objections

2. In claim 1, the language “. . .and the rod can is configured to recover. . .” should be changed to “. . .and the rod [[can]] is configured to recover. . .” for clarity.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheely Joseph H (US 1573648) in view of Clarot, Tim et al. (US 20040219107).

6. Regarding claim 1, Sheely discloses a wiper (lines 8-15, container having brush or swab), comprising:

a wiping body (lines 50-54, Figs. 1, 2, swab 6); and

an outer packing characterized in that said outer packing is a tube-like container having a uniform transverse cross section (lines 46-50, Figs. 1, 2, container 4 having uniform cylindrical shape);

the tube-like container having a first end and a second end (Figs. 1, 2, container 4 having

wherein both the first end and the second end of the tube-like container are closed permanently through fusion so as to form a rigid and integral tube-like container (lines 46-50, container made in two parts from fusing or welding);

wherein the tube-like container is configured such that it can contain a substance selected from the group consisting of a working fluid, a working powder, and a working ointment (lines 8-10, container holding drugs, perfumes, antiseptics or other liquids);

wherein a tip of the wiping body is fixedly coupled with the first end of the tube-like container through fusion (lines 50-54, 65-69, brush permanently secured);

wherein the tube-like container has a circumferential easy break-off mark on an exterior surface of the tube-like container positioned, in the longitudinal direction, substantially in the middle of the tube-like container (lines 46-50, Figs. 1, 2, circle 5 located substantially in the middle of container 4);

wherein the tube-like container is configured to be ruptured and separable into the first portion and a second portion along the easy break-off mark, and

wherein the ruptured tube-like container will not reseal (lines 16-20, capsule made of fragile material and therefore not resealing);

wherein the wiping body extends longitudinally from the first end of the tube-like container to beyond the position of the easy break-off mark (Fig. 2, brush 6 extending beyond circle 5);

wherein the tube-like container is configured such that, when broken off along the easy break-off mark, the first portion of the tube-like container is separable from the second portion of the tube-like container to expose the wiping body for wiping (lines 26-34, container broken and base of capsule forming a handle); and

7. Sheely discloses the invention substantially as claimed, including an easy break-off mark that appears as scored on an outer surface (Fig. 1, circle 5 extending around outer circumference of container 4). However, Sheely is silent whether the easy break-off mark is formed by a cutting tool. Instead, Sheely calls for welding or fusing the two halves of container 4 (lines 46-50). However, this limitation is interpreted as a product-by-process limitation, since Sheely appears to disclose all the claimed structures although produced by a different method. Therefore, the burden is shifted to the

applicant to show an unobvious difference. See MPEP 2113 and In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

8. Sheely discloses the invention as substantially claimed, but lacks a rod that deforms under force without interfering with the breaking-off of the tube-like container.

Clarot discloses a wiper (¶ [0002], [0010], [0017], Figs. 1, 2, system 10), comprising:

a rod having a first end and a second end (¶ [0018], Figs. 1, 2, stick or handle portion 16);

a wiping body provided at the first end of the rod (¶ [0018], Figs. 1, 2, portion 18 comprising cotton or sponge); and

an outer packing characterized in that said outer packing is a tube-like container (¶ [0017], Figs. 1, 2, container 14);

wherein a tip of the second end of the rod is fixedly coupled with the first end of the tube-like container (¶ [0026], Figs. 1, 2, end 26 configured to engage and secure swab 12 in place within container 14);

wherein the second end of the rod extends longitudinally from the first end of the tube-like container to beyond the position of an easy break-off point (¶ [0019], Fig. 2, container 14 depicted as broken and applicator 12 extending beyond remaining portion of container 14);

wherein when the tube-like container is broken off along the easy break-off mark, a flexible deformation of the rod occurs under force without interfering with the breaking-off of the tube-like container and the rod is configured to recover from the flexible

deformation after said force that makes it deform is removed (Fig. 2, container 14 depicted as broken and applicator 12 straightened).

Clarot applies a composition within nasal membranes by extending an applicator to a longer length (¶ [0006]). In other words, adding a rod to the invention of Sheely would allow a user to apply antiseptics or other liquids within the nasal cavity. One would be motivated to modify Sheely with the rod of Clarot since Sheely calls for applying drugs locally (lines 33-34). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Sheely as discussed with the rod of Clarot in order to extend the reach of an applicator further when applying medicines.

9. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheely Joseph H (US 1573648) in view of Clarot, Tim et al. (US 20040219107), further in view of Rowe; John P. et al. (US 5826600).

10. Regarding claim 5, Sheely and Clarot disclose the invention substantially as claimed, but lack a wiping body divided into two parts. Instead, both Sheely and Clarot disclose only unitary wiping bodies. Rowe discloses a wiper (col. 2, lines 27-29, Figs. 1-3, applicator assembly 10), comprising:

a rod having a first end and a second end (col. 2, lines 44-49, Figs. 1, 2, applicator 20);

a wiping body provided at the first end of the rod (col. 2, lines 44-49, Figs. 1, 2, applicator end-portion 24); and

wiping body provided at the first end of the rod is divided into two parts along the axial direction of the rod (col. 2, lines 44-49, Figs. 1, 2, series of flexible bristles 24').

Rowe adds surface area to an applicator for liquids by increasing the size of an applicator. One would be motivated to modify Sheely and Clarot with the axially divided wiping body of Rowe since this would allow more of the active liquid to be applied. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Sheely and Clarot as discussed with the axially divided wiping body as taught by Rowe in order to apply a greater quantity of liquid than with a one-piece wiping body.

Response to Arguments

11. Applicant's arguments filed 01 December 2010 with respect to the rejection(s) of claim(s) 1, 4, 5 and 27-30 under 35 USC § 102 and 103 over Rowe, Nakatani and Gueret have been fully considered and are persuasive. Therefore, the rejection is withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 35 USC § 103 over Sheely, Clarot and Rowe.

12. Applicant notes that Rowe lacks a tube-like container with a uniform transverse cross section, and instead calls for a tapering tube. Applicant also notes that Nakatani lacks a container with a uniform cross section since Nakatani calls for a container having non-uniform transverse cross section which is formed from a non-rigid material. Examiner finds these arguments persuasive, therefore the rejections citing Rowe and

Nakatani are withdrawn. However, Examiner cites Sheely as teaching a container with a uniform cross section in the new grounds of rejection.

13. Applicant asserts that Gueret fails to remedy the deficiencies of Rowe, namely an easy break-off mark configured such that the ruptured container will not reseal, since Gueret teaches a screw top container. Examiner cites Sheely as teaching a container with an easy break-off mark that does not reseal in the new grounds of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- ◆ Battisti; Peter et al. US 20060282035
- ◆ Lee, Robert US 20050123878
- ◆ Tsaur, Garry US 20040099543
- ◆ Van Dyke, Darrell W. et al. US 20030173236

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to:

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16. The Examiner can be reached 8:00am to 4:00pm Monday through Friday.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/
Examiner, Art Unit 3761